



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 7, 2004

Ms. Mary Nichols  
Senior Vice President and General Counsel  
Texas Mutual Insurance Company  
221 West 6<sup>th</sup> Street, Suite 300  
Austin, Texas 78701-3403

OR2004-0099

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 193922.

The Texas Mutual Insurance Company (the "company") received a request for "a full copy of [the company's] utilization review criteria." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the requested information is made confidential under section 2(d) of article 5.76-3 of the Insurance Code. Section 2(d) of article 5.76-3 provides:

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Except as otherwise provided by this subsection, the company is subject to the open meetings law, Chapter 551, Government Code, and the open records law, Chapter 552, Government Code. The board may hold closed meetings to consider and refuse to release information relating to claims, rates, the company's underwriting guidelines, and other information that would give advantage to competitors or bidders.

You state that the requested utilization review criteria is "information relating to claims." You explain that the company competes for business with other insurance carriers in the workers' compensation insurance marketplace, and "has used its own internal resources in efforts to reduce costs in the processing of claims." You further explain that the company "has developed and maintains numerous audit and reimbursement protocols," which, if released, would allow competitors to "undercut Texas Mutual's competitive position in the workers' compensation insurance marketplace... by providing Texas Mutual's competitors with cost control methods that [the company] has developed with its own time and resources."

After reviewing your arguments and the documents at issue, we conclude that you have demonstrated that the release of the requested information would "give advantage to competitors or bidders" for purposes of section 2(d) of article 5.76-3. The company therefore may withhold the requested information pursuant to section 552.101 of the Government Code.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

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<sup>2</sup>As we are able to make this determination, we need not address your argument under section 552.104 of the Government Code.

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 193922

Enc. Submitted documents

c: Dr. Kyle J. Campbell  
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(w/o enclosures)